IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 127 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASHCHANDRA V SULUBRAKER

Versus

PARSOTTAMBHAI G BARIA

Appearance:

MR ADIL MEHTA for Petitioner

MR DN PANDYA for Respondent No. 1

MR ST MEHTA, Ld. APP for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 11/08/2000

C.A.V. JUDGEMENT

1. Heard Mr.Adil P.Mehta, learned advocate for the petitioner appointed as amicus curiae by this Court, Mr.D.N.Pandya, learned advocate for the revision-opponent No.1 and Mr.S.T.Mehta, learned APP for the

revision-opponent No.2 i.e. State of Gujarat.

2. This is a criminal revision application under section 401 read with section 397 of the Criminal Procedure Code (in short Cr.P.C.) filed by the original accused in criminal case No.2050/86 which was pending on the file of learned Judicial Magistrate First Class, Rajpipla (who will be referred to as `the learned Magistrate') challenging the correctness, legality and propriety of the common judgment Exh.6 dated 13th February, 1989, rendered by the Additional Sessions Judge, Bharuch, (who will be referred to as `the learned Appellate Judge') in two consolidated appeals No.27/88 and 33/88, whereby, the learned Appellate Judge was pleased to reverse an order dated 19th November, 1988, passed by learned Magistrate for handing over the jeep vehicle to accused and to make absolute the order under which vehicle jeep was handed over to complainant.

2.1 Here in this criminal revision application, the present revision/petitioner was accused while the present revision/opponent No.1 was the complainant in criminal case No.2050/86 and, therefore, for convenience parties will be referred to as the complainant and accused respectively.

3. The facts leading to this criminal revision application in a nutshell are as follows:

3.1 The complainant Parshottambhai Gambhirbhai Bariya is carrying on business of transport and he is an owner of Jeep No.GAQ-4784. Accused Prakashchandra Vishnupanth Sulubraker was employed as driver by the complainant for said jeep. It is the case of the complainant that he had purchased that jeep from one Faridkhan Alamkhan Pathan of Kheralu for sale price of Rs.87,000/- on 13th April, 1985. He had paid Rs.47,500/- in cash to that Faridkhan Alamkhan Pathan. It was agreed upon by Faridkhan that remaining amount of sale price for which a loan has been taken from the bank would be got transferred by the complainant in his name and he would straight way make payment of instalments in that loan account. It is further the case of the complainant that physical possession of the jeep was handed over to him and Faridkhan who was vendor, transferred the said jeep in his name in R.T.O office record and since thereafter that vehicle was in the name of complainant. Thereafter accused came to complainant and informed complainant that he has got one vehicle contract for transport, taken for Baroda Dairy and its Maternity Home, and therefore, complainant engaged accused as a driver of the said jeep.

Accused promised complainant that he would deposit the amount of transport charges which he would earn and on the basis of said promise the complainant handed over the jeep to accused. It is case of the complainant that, since after August 1986, accused had not given any account from the earnings of jeep. Thereafter complainant inquired from Baroda Dairy and its Maternity Home, and on inquiry he came to know that accused had not gone to that Baroda Dairy for contract purpose upto 4.11.86 and therefore contract in between that Baroda Dairy and accused was cancelled on 5.11.86. Thereafter, accused did not return the possession of the jeep to the complainant. He was absconding. The complainant came to know that the accused has disposed of the jeep. Thereafter, complainant lodged a private complaint in the court. Process for offences under sec.408 of IPC was issued against the accused. On that very day, complainant submitted an application Exh.3 under sec.93 of Cr.P.C. requesting the court to direct the police to seize that jeep. Pursuant to order below application Exh.3, the PSI of Rajpipla Police Station had seized that jeep and produced it before the court.

3.2 Thereafter, on 5.1.1987 complainant submitted application to return that jeep to him. After hearing both the parties, the learned Magistrate passed an order directing jeep to be handed over to complainant. Thereafter, accused appeared before the court. After framing the charge against accused, trial of a case was conducted against accused and after full trial accused was acquitted under sec.245 of Cr.P.C for an offence punishable under sec.408 of IPC. In that order dtd.19.11.1988 the learned Magistrate passed an order that vehicle jeep which was handed over to complainant as a result of search warrant issued by the court, be handed over to accused and therefore a specific direction was given to the complainant that he should hand over jeep to accused.

3.3 Being aggrieved against and dissatisfied with the said order with regard to muddamal vehicle jeep, the complainant preferred a Criminal Appeal No.27/88 while accused preferred Criminal Appeal No.33/88 challenging that order dated 19.11.88 passed by the learned Magistrate in criminal case No.2050/86 to the Sessions Court, Bharuch. Thereafter, the learned Appellate Judge after hearing the arguments of learned Advocates for both the parties decided that two Criminal Appeals No.27/88 & 33/88 by rendering one common judgment Exh.6. The learned Appellate Judge, Bharuch allowed the Criminal Appeal No.27/88 which was filed by the complainant and

dismissed Criminal Appeal No.33/88 which was filed by accused. The learned Appellate Judge was pleased to set aside an order of the learned Magistrate directing complainant to hand over the jeep to the accused. She was further pleased to confirm an earlier order dated 19-1-1987 below Exh.3 which was passed pending the trial of the case directing the jeep to be handed over to the complainant.

4. Being aggrieved against and dissatisfied with the said common judgment Exh.6 dated 13.2.1989 of the learned Appellate Judge in aforesaid two Criminal Appeals No.27/88 and 33/88, the original accused has preferred this Criminal Revision Application challenging the order of handing over jeep to complainant, passed by the learned Appellate Judge on the ground that said order is not correct, illegal and perverse.

5. Formerly, accused/revision-petitioner was represented by learned advocate Shri K.R.Vyas. On his elevation of Mr.K.R.Vyas, as Hon'ble Judge to this Court, a fresh notice was issued against the revision/petitioner. Thereafter, notice was issued against the petitioner but it could not be served as his whereabouts were not known. Many attempts were made to serve the notice against the revision-petitioner. As notice could not be served upon the petitioner, on 30.6.2000 this Court passed an order appointing Shri Adil P.Mehta as amicus curiae for the revision/petitioner.

6. Heard Mr.Adil P.Mehta, learned advocate for the revision-petitioner as amicus curiae, Mr.D.N.Pandya, learned advocate for the revision-opponent No.1 and Mr.S.T.Mehta, learned APP for the revision-opponent No.2 State.

7. Shri Adil Mehta, learned advocate for the revision-petitioner has argued that he has gone through record and proceedings of the case but he has not found anything on record to show that record from R.T.O. was produced in the case. He has further argued that no copy of R.C.A Book issued by RTO was produced by either party. He has fairly conceded to this Court that, in such type of cases when both the parties claim their ownership for the vehicle, the vehicle should be handed over to that person who is an owner as per RTO record. He has contended that, when there is no RTO record, the observation of the learned Appellate Judge with regard to name of complainant appearing in RTO record is perverse and, therefore, the order challenging in this application be set aside.

8. On reading the judgment of the Appellate Judge which is challenged in this criminal revision application, it is crystal clear that, from the very beginning it is the case of the complainant that he purchased the said vehicle from one Faridkhan Alamkhan Pathan of Kheralu. The prosecution has examined that Faridkhan Alamkhan Pathan in the case. Said Faridkhan Alamkhan has deposed in his evidence that he knows complainant Parshottambhai Gambhirbhai and a transaction with regard to sale of jeep was taken place between him and complainant. He sold that jeep to Parshottambhai for Rs.87,000/- three years before date of his deposition dated 5.10.88. He has further deposed that an amount of Rs.47,500/- was paid to him by the complainant. He has further deposed that said jeep GAQ 4784 was handed over to complainant on that very day. He has also deposed that jeep was registered in RTO record in his name. All these facts are not challenged by the accused. In cross-examination he has admitted that Banakath Exh.68 was executed by him. That Banakath Exh.68 is dated 13th April, 1984. When there is no cross-examination on the point of ownership of jeep to be of Faridkhan Alamkhan Pathan, it can be said that Faridkhan Alamkhan Pathan was an owner of jeep and he sold that jeep to present complainant.

9. The learned Appellate Judge has observed in her judgment that, on perusal of registration book issued by RTO for this vehicle, owner was Faridkhan Alamkhan Pathan. It is further observed in para 12 of her judgment that, on the basis of `No objection' of Faridkhan Alamkhan, said jeep was transferred in the name of complainant in registration book and, therefore, prima facie there was an evidence before the court that as per RTO record jeep was of ownership of complainant.

10. Shri Adil Mehta has argued that looking to Exh.68 one Mohmadbhai Pathan has sold jeep to the present complainant but when Faridkhan Alamkhan Pathan himself has deposed that he was an owner of jeep as per RTO record and when he sold the jeep to complainant there is no reason to disbelieve that evidence. The learned Appellate Judge has also observed that Mohmadkhan is not an owner of the vehicle and there is no evidence that Faridkhan Alamkhan Pathan had sold the vehicle to Mohmadkhan. It is also observed that looking to Exh.68, it is not crystal clear as to how Mohmadkhan entered into transaction of sale. The learned Appellate Judge has also observed that, in Exh.68 someone has signed for and on behalf of Mohmadkhan. After analyses of the evidence,

the learned Appellate Judge has come to conclusion that complainant is entitled to have the possession of the vehicle jeep.

11. In the facts and circumstances of the case and in view of the aforesaid discussion, I find no other material to come to a different conclusion that order challenged in this application is illegal, incorrect or perverse and, therefore, this Criminal Revision Application deserves to be dismissed and accordingly it is dismissed. Common Judgment Exh.6 dated 13.2.89 rendered in Criminal Appeals No.27/88 and 33/88 is confirmed. Rule is discharged.

(H.H. Mehta, J.)

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